

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

DEAN SMITH,
Petitioner.

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CHARGE NO.: 2008CA3353
EEOC NO.: 21BA82093
ALS NO.: 09-0629

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Dean Smith's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CA3353; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of Counts A, B, C, D, E, F, H, I, J, and K of the Petitioner's charge is **SUSTAINED**; and,
- (2) The Respondent's dismissal of Count G and Count L of the Petitioner's charge is **VACATED** and Counts G and Count L are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**.

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 22, 2008², the Petitioner filed a twelve-count (Counts A- L) charge of discrimination with the Respondent against his employer, the Cook County Sheriff ("Employer"). The Petitioner alleged that on February 7, 2007, the Employer transferred the Petitioner out of its Inspector's Unit and into its library because of the Petitioner's age, 69 (Count A), his physical disabilities, which include hypertension (Count B), a thyroid condition (Count C), diabetes (Count D), and bronchitis (Count E), and in retaliation for having previously filed charges of discrimination with the Respondent (Count F). The Petitioner further alleged the Respondent subjected him to harassment because of his age (Count G), his physical disabilities (Counts H, I, J, & K), and in retaliation for having previously filed charges of discrimination with the Respondent (Count L).

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

² The May 22, 2008 charge was filed with the Equal Employment Opportunity Commission (EEOC). Pursuant to a workshare agreement between the Respondent and the EEOC, the charge was deemed filed with the Respondent on the same date it was filed with the EEOC. See Allen v. Lieberman, 359 Ill.App.3d 1170, 836 N.E.2d 64 (5th Dist. 2005).

2. On October 1, 2009, the Respondent dismissed Counts A, B, C, D, E, F, H, I, J, and K of the charge for lack of jurisdiction. The Respondent also dismissed Counts G & L for lack of substantial evidence. On November 4, 2009, the Petitioner filed a timely Request.
3. Prior to February 7, 2007, the Petitioner was an officer in the Inspector's Unit.
4. On February 7, 2007, the Employer transferred the Petitioner from the Inspector's Unit to the Employer's library.
5. Except in housing matters, a charge of discrimination must be filed with the Respondent within 180 days from the date of the alleged civil rights violation. See 775 ILCS 7A-102(A)(1). If a charge is not timely filed with the Respondent, then the Respondent lacks jurisdiction to investigate the charge.
6. Further, when a complainant alleges disability discrimination, the complainant first has the burden of providing the Respondent with medical documentation evidencing that the complainant is disabled within the meaning of the Act. See 56 Ill. Admin. Code, Ch. II, § 2500.20(c); see also 775 ILCS § 1-103(l). The Respondent will thereafter be able to determine whether or not it has jurisdiction to investigate the substantive allegations of the disability discrimination claim.
7. A complainant may prove the existence of a disability by either submitting medical documentation from a physician, or the complainant may submit to the Respondent a Medical Questionnaire completed by a physician. The Medical Questionnaire is provided to the complainant by the Respondent. If the complainant fails to submit to the Respondent either the completed Medical Questionnaire or medical documentation substantiating the existence of the alleged disabling condition, then the Respondent will lack jurisdiction to investigate the substantive allegations of the charge because the complainant will be deemed to have failed to prove he was disabled within the meaning of the Act.
8. In this case, the Respondent provided the Petitioner with a Medical Questionnaire. The Respondent thereafter asked the Petitioner to submit a completed Medical Questionnaire or medical documentation to the Respondent on four (4) separate occasions: **(a)** February 19, 2009; **(b)** June 12, 2009; **(c)** June 18, 2009, and **(d)** June 23, 2009.
9. The Petitioner never submitted a completed Medical Questionnaire to the Respondent. The Petitioner also failed to submit any medical documentation to the Respondent.
10. In his Request, the Petitioner argues his charge is timely because the act of transferring him from the inspector's unit on February 7, 2007, was part of an on-going campaign to "get rid of him" because of his age, and therefore this act was part of a continuing violation. The Petitioner next argues that the May 22, 2008, charge that is currently under review was actually an amendment to his previously filed October 15, 2007 charge. Finally, regarding his allegations of disability discrimination, the Petitioner states in an affidavit that he attempted to cooperate with the Respondent's investigator by providing the Respondent's investigator with HIPAA release forms and by providing the Respondent's investigator with the names of the Petitioner's physician. The Petitioner does not submit a copy of the completed Medical Questionnaire or any medical documentation in support of his Request.

11. In its Response, the Respondent asks the Commission to sustain the dismissal of Counts A, B, C, D, E, F, H, I, J, & K of the charge for lack of jurisdiction.
12. First, the Respondent argues the dismissal of Counts A & F, in which the Petitioner alleged he was transferred on February 7, 2007, because of his age and in retaliation, respectively, is untimely because the charge was filed more than 180 days after the date of the alleged civil rights violation. Further, in a footnote, the Respondent addresses the Petitioner's contention that the May 22, 2008, charge was an amendment to the October 15, 2007 charge. The Respondent states that the Petitioner filed the October 15th charge with the EEOC. Pursuant to the workshare agreement between the Respondent and the EEOC, the charge was deemed filed with the Respondent on October 15, 2007. The Respondent states the October 15th charge was never assigned a docket number by the Respondent because the Respondent determined that the October 15th charge was untimely.
13. Second, the Respondent argues the dismissal of Counts B, C, D, E, H, I, J, & K, all of which allege physical disability discrimination, should be sustained because the Petitioner failed to prove that he is disabled within the meaning of the Act. In particular, the Respondent argues the Petitioner failed to submit to the Respondent either a completed Medical Questionnaire, or any medical documentation. Further, the Respondent argues the Petitioner failed to show why he was unable to provide the required medical documentation to the Respondent prior to the dismissal of his charge.
14. Finally, the Respondent recommends the Commission vacate the dismissal of Counts G & L and remand those Counts for further investigation, stating its investigation into the allegations in Counts G & L was incomplete.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed Counts A, B, C, D, E, F, H, I, J, & K of the Petitioner's charge for lack of jurisdiction.

First, as to Counts A & F, the Commission agrees that the charge as to those counts was untimely. In Counts A & F, the alleged civil rights violation was the transfer of the Petitioner on February 7, 2007. Therefore, the charge was due to be filed no more than 180 days from February 7, 2007, which would have been sometime in early August 2007. The Petitioner filed his charge on May 22, 2008, which was far more than 180 days after the date the alleged civil rights violation occurred. The Petitioner's contention that the May 22, 2008, charge was an amendment of the October 15, 2007, is not persuasive. As the Respondent determined, the October 15, 2007, charge was also untimely.

Second, the Commission finds the Petitioner failed to meet his burden of proving he was disabled; therefore, the Respondent properly dismissed Counts B, C, D, E, H, I, J, & K for lack of jurisdiction. The Petitioner at all times bears the burden of proving the existence of a disability within the meaning of the Act. The Petitioner suggests in his Request that he provided the Respondent with information so that the Respondent could obtain medical documentation from the Petitioner's physicians. However, this was not the Respondent's burden or duty.

Further, the Petitioner offers no explanation for why he did not simply submit a completed Medical Questionnaire to the Respondent, or submit some other medical documentation to the Respondent prior to the dismissal of his charge, or even in support of his Request. The Commission finds that by failing to submit the required medical documentation, the Petitioner failed to prove he was disabled within the meaning of the Act. Therefore, the Respondent lacked jurisdiction to investigate the Petitioner's allegations of disability discrimination.

However, the Respondent does not oppose the Petitioner's Request as to Counts G & L because the Respondent states its investigation into those counts was incomplete. Therefore, the Commission will vacate the dismissal of Counts G & L, and remand those counts to the Respondent so that it may complete its investigation as to Counts G & L.

THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The Respondent's dismissal of Counts A, B, C, D, E, F, H, I, J, and K of the Petitioner's charge is **SUSTAINED**; and,
- (2) The Respondent's dismissal of Count G and Count L of the Petitioner's charge is **VACATED** and Counts G and Count L are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 26th day of May 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini